

DRAWING AMENDMENTS (Other than Those Requested on Form PTO-948)

A drawing amendment is provided on a separate sheet accompanying this Response, labeled “Replacement Sheet” in the top margin. The replacement drawing is submitted because it was noted by the undersigned attorney that the previously-submitted drawing was not in agreement with 37 CFR §1.83(a), in that it did not “show every feature of the invention specified in the claims.” In contrast, the newly-supported drawing illustrates a version of the currently-claimed invention, and finds support at (for example) page 4 lines 10-19 of the application.

REMARKS

1. The Amendments and the Support Therefor

No claims have been canceled or added, and claims 10 and 30 have been amended to leave claims 1-12 and 21-30 in the application. No new matter has been added by the amendments to claims 10 and 30, which find support at (for example) page 7 line 11 onward of the application.

2. Rejection of Claims 1, 4-7, 9, 11, 21, 23, 24, and 27-29 under 35 USC §102 in view of U.S. Patent 5,330,500 to Song

Kindly reconsider and withdraw the rejection of *independent claim 1*, which is understood to be founded on either or both of the following two interpretations (set forth at pages 2-3 of the Office Action):

- (1) The recited first stent section of claim 1, which has reinforcing material in a first pattern oscillating about a line parallel to the longitudinal axis of the graft, is either or both of *Song's* end sections 42 and 44 (FIG. 6), and the recited second stent section of claim 1, which has reinforcing material in a second pattern including separate spaced circumferential hoops extending circumferentially around the longitudinal axis of the graft, is *Song's* midsection 20 (21-22-23-24);
- (2) The recited first stent section of claim 1, which has reinforcing material in a first pattern

oscillating about a line parallel to the longitudinal axis of the graft, is *Song*'s midsection 20 (21-22-23-24, FIG. 6), and the recited second stent section of claim 1, which has reinforcing material in a second pattern including separate spaced circumferential hoops extending circumferentially around the longitudinal axis of the graft, is either or both of *Song*'s end sections 42 and 44.

Regarding interpretation (1) above, the Office Action further states at Page 6:

The claim language does not specify the locations of the first and the second sections, and the transitional phrase "comprising" is open-ended and thus allows there to be more elements than those claimed. Therefore, it would be reasonable to include both sections 42 and 44 as a particular stent section. . . . Claims in a pending application must be given their broadest, reasonable interpretation, and limitations from the Applicant's specification and/or arguments may not be read into the claims. Therefore, the "section" may be broadly interpreted, and is not limited to the narrower description argued by the Applicant because the claims currently do not require more than a "section."

This is understood to argue that sections 42 and 44 of *Song* would *collectively* be regarded a "section." While such an interpretation of "section" is broad, it is not reasonable, as no ordinary artisan would regard a "section" as being formed of two separate and spaced segments such as *Song*'s sections 42 and 44. It is certainly well accepted that during examination, the USPTO must interpret the claims using their broadest reasonable interpretation (MPEP 2111). Words in a claim are therefore given their plain meaning unless a contrary definition is provided in the specification (MPEP 2111.01). Further, the "plain meaning" to be applied to words in a claim is the meaning applied by those of ordinary skill in the art, *not* the meaning ascribed to the term by laymen or others (MPEP 2111.01). Extrinsic references such as dictionaries may provide evidence of the meaning of claim terminology, so long as the dictionary meanings are otherwise consistent with the Applicant's usage (MPEP 2111.01). Where a claim term is an everyday word which is not assigned a special or limited meaning by the specification, it is acceptable to look to a dictionary to determine the meaning that should be given to the term. MPEP 2111.01 (citing *Ferguson Beauregard/Logic Controls v. Mega Systems*, 69 USPQ2d 1001 (Fed. Cir. 2003)); see also *Optical Disc Corp. v. Del Mar Avionics*, 54 USPQ2d 1289, 1295 (Fed. Cir. 2000); *Vanguard Products Corp. v. Parker Hannifin Corp.*, 57 USPQ2d 1087, 1089 (Fed. Cir. 2000).

Here, there are no dictionary definitions which support the Office Action's interpretation of the term "section," which is defined as (with emphasis added to the following citations):

Encarta® World English Dictionary, North American Edition

<http://encarta.msn.com/encnet/features/dictionary/DictionaryResults.aspx?refid=1861710837>

sec·tion [séksh'n]
noun (plural sec·tions)

Definition:

1. ***distinct part***: a distinct part that can be separated or considered separately from the whole of something

Dictionary.com [home, info]

<http://dictionary.reference.com/search?q=section&r=66>

sec·tion /'s?k??n/ —noun

1. a part that is cut off or separated.
2. ***a distinct part or subdivision of anything***, as an object, country, community, class, or the like: the poor section of town; the left section of a drawer.

Merriam-Webster's Online Dictionary, 11th Edition

<http://www.merriam-webster.com/dictionary/section>

sec·tion

Pronunciation: \sek-sh?n\

Function: noun

Etymology: Latin section-, sectio, from secare to cut — more at saw

Date: 1534

- 1 a: the action or an instance of cutting or separating by cutting b: a part set off by or as if by cutting
- 2: ***a distinct part or portion of something written*** (as a chapter, law, or newspaper)

The American Heritage® Dictionary of the English Language

<http://www.bartleby.com/61/82/S0208200.html>

SYLLABICATION: sec·tion

PRONUNCIATION: skshn

NOUN:

1. One of several components; a piece.
2. A subdivision of a written work.

Cambridge International Dictionary of English

http://dictionary.cambridge.org/define.asp?key=71077&dict=CALD

Section

noun [C]

one of the parts that something is divided into:

the sports section of the newspaper

the tail section of an aircraft

Does the restaurant have a non-smoking section?

The poorest sections of the community have much worse health.

He was charged under section 17 of the Firearms Act (= according to that part of the law).

Here, where *Song*'s sections 42 and 44 are spaced by dissimilar section 20 (21-22-23-24), it is simply unreasonable to regard the separate sections 42 and 44 as being the recited “first section.” Such an interpretation does not agree with dictionary definitions, nor with the understanding of an ordinary artisan. Unless the Office can provide support for its interpretation of “section,” interpretation (1) above – where *Song*'s end sections 42 and 44 are regarded as the first stent section of claim 1, and *Song*'s midsection 20 (21-22-23-24) is regarded as the second stent section of claim 1 – cannot properly be applied, as it is not a *reasonable* interpretation.

Further, even if either or both of *Song*'s end sections 42 / 44 was regarded as a “first section,” it still would not form a “first section” as recited, i.e., a “first stent section comprising reinforcing material formed into a first pattern . . . wherein the reinforcing material of the first pattern is disposed on the tubular graft in a pattern which *oscillates about a line which is parallel to the longitudinal axis* of the tubular graft.” Neither section 42, nor section 44, have reinforcing material oscillating in the recited direction (i.e., they do not reciprocate about the recited axially-oriented line)¹: both section 42 and section 44 only oscillate about lines which extend circumferentially, rather than parallel to the graft axis. Otherwise, sections 42 and 44 can be

¹ See, e.g., the definitions of “oscillate” provided at the online dictionaries:

- Encarta: “move backward and forward: to swing between two points with a rhythmic motion” (<http://encarta.msn.com/encnet/features/dictionary/DictionaryResults.aspx?refid=1861635580>)
- Merriam-Webster's Online Dictionary: “to swing backward and forward like a pendulum: to move or travel back and forth between two points” (<http://www.onelook.com/?w=oscillate&lloc=scworef&scwo=1&ls=a>)
- Cambridge Dictionaries Online: “to move repeatedly from one position to another” (<http://dictionary.cambridge.org/define.asp?key=56050&dict=CALD>)

regarded as expanding outwardly as they extend in an axial direction towards the ends of the graft – but they do not then converge inwardly again, and thus do not oscillate in the axial direction as recited.

In addition, *Song*'s midsection 20 (21-22-23-24) also doesn't constitute a second section as recited, i.e., a “a second stent section comprising reinforcing material formed into a second pattern . . . wherein the reinforcing material of the second pattern includes *separate spaced* circumferential hoops extending circumferentially around the longitudinal axis of the tubular graft.” The zigzag “hoops” of 20-21-22-23-24 are not separate and spaced – they're joined, as can be seen with reference to FIG. 3 and column 2 line 67-column 3 line 28 (wherein it is explicitly noted that the “unit structures” 11 of FIG. 1 are ”connected in tandem by a reasonable number of connecting members 31, 33, 35, 37” (FIG. 3)).

Taking the foregoing into account, interpretation (1) therefore does not establish anticipation, since *Song* does not have the characteristics of claim 1 as defined by interpretation (1): *Song*'s sections 42 and 44, considered collectively, do not constitute a “first section” as recited; in any event, *Song*'s sections 42 and 44, whether considered individually or collectively, do not oscillate “about a line which is parallel to the longitudinal axis of the tubular graft” (and rather they oscillate circumferentially); and *Song*'s midsection 20 (21-22-23-24) also doesn't constitute a second section with the recited “separate spaced circumferential hoops” since the hoops of 20-21-22-23-24 are joined.

Regarding interpretation (2) above, here it is understood that *Song*'s midsection 20 (21-22-23-24) is regarded as being a first section including reinforcing material “oscillat[ing] about a line which is parallel to the longitudinal axis of the tubular graft,” and *Song*'s end sections 42 and 44 are regarded as being a second section with “separate spaced circumferential hoops extending circumferentially around the longitudinal axis of the tubular graft.” Even if *Song*'s midsection 20 (21-22-23-24) is regarded as being a first section including reinforcing material “oscillat[ing] about a line which is parallel to the longitudinal axis of the tubular graft,” *Song*'s end sections 42 and 44, which each include only a single hoop, cannot be regarded as constituting the recited second section (with “separate spaced circumferential *hoops* extending

circumferentially around the longitudinal axis of the tubular graft") unless the end sections 42 and 44 are *together* regarded as constituting a "second section" – and this is a not reasonable interpretation as per the discussion above, since the end sections 42 and 44 constitute separate "sections" within the meaning of claim 1.

As per MPEP 2131, "A claim is anticipated only if each and every element *as set forth in the claim* is found, either expressly or inherently described, in a single prior art reference" (emphasis added). Since *Song* does not disclose the matter set forth in claim 1 under any reasonable interpretation of that claim, the rejection of claim 1 must be withdrawn.

Kindly also reconsider and withdraw the rejection of **independent claim 11**. This is understood to assert that end sections 42 and 44 constitute the recited first stent section including reinforcing material formed into a first pattern, with the first pattern including a continuous length of reinforcing material which oscillates about a line parallel to the longitudinal axis of the first stent section. However, as discussed above with respect to claim 1 and interpretation (1), neither of *Song*'s section 42 nor section 44, taken individually, *oscillate* as recited – the reinforcing material in these sections oscillates circumferentially, not longitudinally. If *Song*'s section 42 and section 44 are instead considered *collectively* as constituting the recited first stent section – an interpretation which, as discussed above, is not a reasonable reading that an ordinary artisan would fairly make – it is then notable that these end sections 42 and 44 do not include the recited *continuous* length of reinforcing material oscillating in the reciting manner. If one looks to one of the converging (inwardly extending) continuous lengths of material (e.g., 381 in FIG. 6), note that these terminate at 36, and do not expand (extend outwardly) in such a manner that *Song*'s alleged first section 42/44 can fairly be said to have a continuous length of material which oscillates longitudinally. In short, *Song*'s sections 42 and 44, taken individually (or taken collectively, which is an unreasonable interpretation), simply do not illustrate the continuous length of reinforcing material which oscillates in an axial direction.

The rejection of independent claim 11 is further understood to assert that *Song*'s midsection 20 (21-22-23-24) constitutes the recited second pattern. However, claim 11 also

recites that “the second stent section *does not include* reinforcing material formed into the first pattern” (i.e., into “a continuous length of reinforcing material which is disposed around the first stent section in a pattern which oscillates about a line which is parallel to the longitudinal axis of the first stent section”). Contrary to this recitation, *Song*’s midsection 20 (21-22-23-24) *includes* reinforcing material formed into the same pattern as either or both of sections 42 and 44 (i.e., *Song*’s alleged first and second sections have the same pattern): both are formed of the circumferentially-oscillating lengths shown in FIG. 1. *Song* therefore does not meet the description set forth by claim 11.

Regarding the rejection of ***independent claim 21***, this is understood to utilize the interpretations applied against claim 1, and this rejection should be withdrawn for generally the same reasons discussed above for claims 1 and 11. Regarding *interpretation (1)*, as discussed above, *Song*’s end sections 42 and 44, taken either individually or collectively – with collective grouping being unreasonable – don’t have a first section having a “*continuous* length of reinforcing material which is disposed around the tubular graft in a pattern which *oscillates about a line which is parallel to the longitudinal axis* of the tubular graft.” There is no continuous length in *Song*’s end sections 42 and 44 which oscillates in this manner. As for *interpretation (2)*, wherein *Song*’s end sections 42 and 44 are regarded as constituting the recited second section, here too the condition that “the first stent section does not include reinforcing material formed into the second pattern, and the second stent section does not include reinforcing material formed into the first pattern” is not met: as noted above, *Song*’s midsection 20 (21-22-23-24) (here the “first section”) *includes* reinforcing material formed into the same pattern as either or both of sections 42 and 44, i.e., “a continuous length of reinforcing material which is disposed around the tubular graft in a pattern which oscillates about a line which is parallel to the longitudinal axis of the tubular graft.”

It is noted that many of the arguments above were presented in a prior Response, but the “Response to Arguments” at page 6 of the January 23, 2009 Office Action does not seem to fully respond to these arguments. The Office Action only responds to previously-presented arguments that it is unreasonable to consider *Song*’s sections 42 and 44 as together constituting

a “section.” If any of the foregoing rejections are maintained, kindly take care to fully address *all* arguments, as per MPEP 707.07(f), Answer All Material Traversed (“Where the applicant traverses any rejection, the examiner should, if he or she repeats the rejection, take note of the applicant's argument and answer the substance of it”); also MPEP 2145 (“Office personnel should consider all rebuttal arguments and evidence presented by applicants. . . . If the evidence is deemed insufficient to rebut the *prima facie* case of obviousness, Office personnel should specifically set forth the facts and reasoning that justify this conclusion”).

Dependent claims 4 and 27 are submitted to be novel because if the larger-diameter section(s) of *Song* – sections 42 and 44 – are regarded as the first sections, then *Song* does not include first sections as recited in parent claims 1 and 21: as discussed above, *Song*'s sections 42 and 44 oscillate circumferentially, not longitudinally.

Similarly, ***dependent claims 9 and 23*** are submitted to be novel because as per the Office Action's comments at page 6 – “[t]he second stent section interpreted as element 20 has 6 peaks, thus meeting the limitations of claims 9 and 23” – means that the first stent section is regarded as *Song*'s elements 42 and/or 44. However, as discussed above, *Song* does not include first sections as recited in parent claims 1 and 21: *Song*'s sections 42 and 44 oscillate circumferentially, not longitudinally. The recited arrangement, which yields the advantages noted at page 6 lines 1-9, is also unobvious because it is in no way evident from the art of record, nor in view of common knowledge in the field.

In similar respects, the remaining dependent claims 5-7, 21, 24, 28, and 29 are also novel because *Song* does not show a stent graft meeting the descriptions of these claims, while also meeting the descriptions of their parent claims: *Song* simply does not have first and second sections having the recited characteristics.

3. Rejection of Claims 2, 3, 10, 12, 25, 26, and 30 under 35 USC §103(a) in view of U.S. Patent 5,330,500 to Song and U.S. Patent 6,338,739 to Datta

These claims are submitted to be allowable for at least the same reasons as their parent claims. Additionally, claims 10 and 30, which recite the use of a spacer section spacing the first

and second sections and lacking reinforcing material, are unobvious in view of *Song* and *Datta*, which neither show nor suggest any such arrangement. Further, no ordinary artisan would contemplate modifying *Song* to include this feature since *Song* repeatedly emphasizes the use of reinforcing structure along the entire length of the *Song* stent, and there is no apparent reason why *Song* would use a spacer section as recited.

4. Rejection of Claims 2, 3, 10, 12, 25, 26, and 30 under 35 USC §103(a) in view of U.S. Patent 5,330,500 to Song and U.S. Patent 6,254,632 to Wu et al.

These claims are submitted to be allowable for at least the same reasons as their parent claims.

5. In Closing

If any questions regarding the application arise, please contact the undersigned attorney. Telephone calls related to this application are welcomed and encouraged. The Commissioner is authorized to charge any fees or credit any overpayments relating to this application to deposit account number 18-2055.

ATTACHMENTS / ENCLOSURES:
• Replacement FIG. 1

For the Applicant,



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